

Judge Franklin D. Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
BENJAMIN J. GERVAIS,)
Defendant.)

NO. CR01-5572FDB
EXPEDITED SETTLEMENT
AGREEMENT RE: REAL PROPERTY
LOCATED AT 1215 SOUTH FIFE,
TACOMA, WASHINGTON

IT IS HEREBY STIPULATED by and between the Plaintiff, United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Richard E. Cohen, Assistant United States Attorney for said District, and Claimant, Washington Mutual Bank, FA, by and through Kelly Sutherland, its counsel, to compromise and settle claimant's petition with respect to the subject real property located at 1215 South Fife, Tacoma, Washington, more particularly described in Exhibit A (hereinafter "the subject real property"), according to the following terms:

1. The parties to this agreement hereby stipulate that the use of the subject real property to facilitate the distribution of a controlled substance, to wit, marijuana, in violation of Title 21, United States Code, Section 841, occurred without the knowledge or consent of Washington Mutual.

2. Plaintiff and petitioner Washington Mutual agree that upon sale of the subject real property by the United States Marshals Service pursuant to entry of a Final Judgment of Forfeiture, and after payment of expenses of custody and sale incurred by the United States

1 Marshals Service, the following shall be paid to claimant, Washington Mutual from the proceeds
 2 of the sale of the subject real property:

3 a. All unpaid principal due to Washington Mutual in the amount of
 4 \$63,367.83 as of March 31, 2004, pursuant to the mortgage instrument dated January 1, 2000,
 5 which was secured by a deed of trust recorded January 5, 2000, in the official record of Pierce
 6 County, State of Washington, as document #200001050740, and as fully described in the
 7 Petition and Verified Claim by Washington Mutual on file herein.

8 b. All unpaid interest at the base contractual rate of 8.75% under the above
 9 mortgage instrument totaling \$4,614.27 as of March 31, 2004, plus additional interest assessed at
 10 \$15.19 per diem until the date of payment; and,

11 c. Other fees and costs totaling approximately \$4,428.82 through March 31,
 12 2004, as follows:

Escrow advances	\$1,041.79
Accrued Late Charges	686.10
Property Inspections	15.20
Other fees/advances	49.00
Bankruptcy fees/costs	650.00
Foreclosure fees/costs	<u>1,986.73</u>
TOTAL	\$4,428.82

17 3. This Settlement Agreement and payment to Washington Mutual is conditioned
 18 upon the United States' prevailing against any competing claims.

19 4. The payment to Washington Mutual shall be in full settlement and satisfaction of
 20 any and all claims by Washington Mutual to the subject real property named in the above-
 21 captioned forfeiture action and all claims, resulting from the incidents or circumstances giving
 22 rise to this forfeiture action, except as specified in paragraph 6 below.

23 5. Upon payment, Washington Mutual agrees to assign and convey its security
 24 interest to the United States of America via recordable documents and to release and hold
 25 harmless the United States, and any agents, servants, and employees of the United States (and
 26 any involved state or local law enforcement agencies and their agents, servants, or employees),
 27 in their individual or official capacities, from any and all claims by Washington Mutual and its
 28 //

1 agents that currently exist or that may arise as a result of the Government's actions against and
 2 relating to the subject real property.

3 6. As a part of this settlement, Washington Mutual agrees for a period of six (6)
 4 months from the date this agreement is filed with the Court, not to pursue against the United
 5 States any other rights it may have under the Deed of Trust, including but not limited to the
 6 right to initiate/continue a foreclosure sale. Washington Mutual has agreed to discontinue the
 7 Trustee Sale scheduled for March 26, 2004.

8 7. Washington Mutual understands and agrees that by entering into this Expedited
 9 Settlement of its interest in the above described property, Washington Mutual waives any rights
 10 for the six (6) months from the date this agreement is filed with the Court to further litigate its
 11 interest in the property and to petition for remission or mitigation of the forfeiture. Upon
 12 approval of this agreement by the Court, unless specifically directed by an order of the court,
 13 Washington Mutual shall be excused and relieved from further participation in this action.

14 8. Washington Mutual understands and agrees that the United States reserves the
 15 right to void the expedited settlement agreement if, before payment of the mortgage or lien, the
 16 United States Attorney obtains new information indicating that the mortgagee or lienholder is
 17 not an "innocent owner" or "bona fide purchaser" pursuant to the applicable forfeiture statutes.
 18 In the event the United States obtains any such information, the United States Attorney also
 19 reserves the right, in its discretion, to terminate the forfeiture at any time and release the subject
 20 property. In either event, the Government shall promptly notify Washington Mutual of such
 21 action. A discretionary termination of forfeiture shall not be a basis for any award of fees under
 22 Title 28, United States Code, Section 2465.

23 9. Washington Mutual agrees to execute further documents, to the extent necessary,
 24 to convey clear title to the property to the United States and to implement further the terms of
 25 this settlement. Each party agrees to bear its own costs and fees, except as expressly set forth
 26 herein.

27 10. Payment to Washington Mutual pursuant to this settlement agreement is contingent
 28 upon forfeiture of the subject property to the United States, the United State's prevailing over

1 any other third-party claims, the Court's entry of a final order of forfeiture, and sale of the
2 subject property, pursuant to the final order of forfeiture.

3 Respectfully submitted,

4 JOHN MCKAY
5 United States Attorney
6
7

8 Dated May 3, 2004

9
10 s/Richard E. Cohen
11 RICHARD E. COHEN
12 Assistant United States Attorney
13 601 Union Street, Suite 5100
14 Seattle, Washington 98101-3903
15 206/553-2242; fax 206/ 553-6934
16 Richard.E.Cohen@usdoj.gov

17 Dated May 5, 2004

18 s/Kelly Sutherland
19 KELLY SUTHERLAND
20 Attorney for Washington Mutual
21 Shapiro & Kreisman
22 201 NE Park Plaza Drive, Ste 150
23 Vancouver, WA 98684
24 360/260-2253 ext. 381; fax 360/260-2285
25 KellyS.wa@logs.com

ORDER

This Stipulated Expedited Settlement Agreement between the United States of America and Washington Mutual is hereby approved.

DATED this ____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

Presented by:

s/Richard E. Cohen
RICHARD E. COHEN
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EXHIBIT A

LEGAL DESCRIPTION

The North 40 feet of the South 80 feet of Lots 5, 6, and 7 in Block 3 of BETHELL'S FIRST ADDITION
TO TACOMA, W.T., as per plat recorded in Volume 4 of Plats, page 53, Records of Pierce County
Auditor; situate in the City of Tacoma, County of Pierce, State of Washington

Parcel No. 249500-014-0

COMMONLY KNOWN AS: 1215 South Fife, Tacoma, Washington